

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS  
BOARD REGION 9

VARIETY RESTAURANT GROUP, LLC D/B/A  
TUDOR'S BISCUIT WORLD OF ELKVIEW

and

UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION,  
CLC (UFCW), LOCAL 400

Cases 09-CA-288570  
09-CA-288576  
09-CA-288589  
09-CA-290715  
09-CA-290704  
09-RC-286639

**ORDER FURTHER CONSOLIDATING CASES,**  
**SECOND CONSOLIDATED COMPLAINT,**  
**AND NOTICE OF HEARING**

On April 20, 2022, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued in Cases 09-CA-288570, 09-CA-288576, 09-CA-288589 and 09-CA-290715 alleging that Variety Restaurant Group, LLC d/b/a Tudor's Biscuit World of Elkview (Respondent) had engaged in unfair labor practices that violate the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq. Thereafter, on May 23, 2022, an Order Directing Hearing and Consolidating Cases and Notice of Hearing issued in Case 09-RC-286639, in which Respondent and the United Food and Commercial Workers International Union, CLC (UFCW), Local 400 (Union) are both parties, directing a hearing on objections filed by the Union to conduct affecting the results of the election in Case 09-RC-286639, and consolidating 09-RC-286639 with Cases 09-CA-288570, 09-CA-288576, 09-CA-288589 and 09-CA-290715.

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delays, IT IS ORDERED THAT those

cases are further consolidated with Case 09-CA-290704, filed by the Union, which alleges that Respondent has engaged in further unfair labor practices within the meaning of the Act.

This Order Further Consolidating Cases, Second Consolidated Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Section 102.15 of the Board's Rules and Regulations, is based on these consolidated cases and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 09-CA-288570 was filed by the Union on January 6, 2022, and a copy was served on Respondent by U.S. mail on January 7, 2022.

(b) The charge in Case 09-CA-288576 was filed by the Union on January 6, 2022, and a copy was served on Respondent by U.S. mail on January 7, 2022.

(c) The charge in Case 09-CA-288589 was filed by the Union on January 6, 2022, and a copy was served on Respondent by U.S. mail on January 7, 2022.

(d) The amended charge in Case 09-CA-288589 was filed by the Union on April 1, 2022, and a copy was served on Respondent by U.S. mail on April 7, 2022.

(e) The charge in Case 09-CA-290704 was filed by the Union on February 14, 2022, and a copy was served on Respondent by U.S. mail on February 16, 2022.

(f) The charge in Case 09-CA-290715 was filed by the Union on February 14, 2022, and a copy was served on Respondent by U.S. mail on February 16, 2022.

2. (a) At all material times, Respondent has been a corporation with numerous locations in the States of West Virginia, Kentucky, and Ohio, including an office and place of business in Elkview, West Virginia (Respondent's facility), the only facility involved herein, and has been engaged in the operation of restaurants.

(b) In conducting its operations, described in paragraph 2(a), during the 12-month period ending May 31, 2022, Respondent derived gross revenues in excess of \$500,000, and purchased and received goods and materials valued in excess of \$50,000 from suppliers located in the State of West Virginia, each of which, in turn, purchased and received said goods and materials at their locations in West Virginia directly from points outside the State of West Virginia.

(c) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)
(b) (6), (b) (7)(C)	-	(b) (6), (b) (7)(C)

5. Respondent, by (b) (6), (b) (7)(C) at Respondent's facility:

(a) On about November 8, 2021, coerced employees by telling them that they were not allowed to fraternize with co-workers outside of work.

(b) On about November 16, 2021:

(i) coerced employees by telling them that (b) (6), (b) (7)(C) would lose (b) (6), (b) (7)(C) job as a result of the union organizing campaign;

(ii) threatened employees that they could lose their jobs as a result of the union organizing campaign.

(c) On about November 19, 2021:

(i) threatened employees with job loss because of their support for and activities on behalf of the Union;

(ii) coerced employees by telling them that (b) (6), (b) (7)(C) would lose (b) (6), (b) (7)(C) job because of the Union;

(iii) threatened employees that they would have their wages reduced to \$6 an hour if the Union wins.

(d) On about November 20, 2021:

(i) coerced employees by telling them that they never should have gone to the Union and that employees should have come to (b) (6), (b) (7)(C) with their problems;

(ii) coerced employees by telling them that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) would lose (b) (6), (b) (7)(C) job if employees voted to unionize and that (b) (6), (b) (7)(C) would lose (b) (6), (b) (7)(C) job immediately after the ballots were counted.

(e) About early December 2021, told employees that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) would lose (b) (6), (b) (7)(C) job because of the Union and that employees' wages could be reduced to \$6 an hour.

(f) About December 2, 2021, coerced employees by telling them that if the Union was selected to represent the employees, (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) would all lose their jobs.

(g) On about January 1, 2022:

(i) threatened employees with discharge and unspecified reprisal;

(ii) implied that organizing on behalf of the Union would be futile because the Union could not stop (b) (6), (b) (7)(C) from doing what (b) (6), (b) (7)(C) wanted to do.

6. On about January 1, 2022, Respondent, by (b) (6), (b) (7)(C), at Respondent's facility told employees that antiunion employees were permitted to give the prounion employees "as much hell" as they wanted to give them.

7. (a) On about (b) (6), (b) (7)(C) 2022, Respondent suspended its employee (b) (6), (b) (7)(C)

(b) On about (b) (6), (b) (7)(C) 2022, Respondent suspended its employee (b) (6), (b) (7)(C)

(c) On about (b) (6), (b) (7)(C) 2022, Respondent suspended its employee (b) (6), (b) (7)(C)

(d) Respondent engaged in the conduct described above in paragraphs 7(a) through (c), because the named employees of Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

8. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time line cooks, prep cooks, biscuit makers, dishwashers, cashiers, and shift leaders employed by the Employer at its restaurant located at 1083 Main Street, Elkview, West Virginia; but excluding general managers, assistant managers, crew leader floaters, office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) By about November 17, 2021, a majority of Respondent's employees in the Unit designated the Union as their exclusive collective-bargaining representative for purposes of collective bargaining by signing authorization cards.

(c) About November 18, 2021, the Union, in person at Respondent's Sissonville, West Virginia facility, requested that Respondent recognize the Union as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(d) The serious and substantial unfair labor practice conduct described above in paragraphs 5, 6, and 7(a)-(c), is such that there is only a slight possibility of traditional remedies erasing their effects and conducting a fair rerun election. Therefore, on balance, the employees'

sentiments regarding representation, having been expressed through authorization cards, would be protected better by issuance of a bargaining order.

(e) The allegations described above in paragraphs 5, 6, and 7(a)-(c) requiring the issuance of a bargaining order are supported by, among other things:

- (i) the Union's request for recognition has been outstanding since November 18, 2021;
- (ii) the conduct described above in paragraph 5 followed immediately on the heels of the Respondent's knowledge of the Union's campaign, and occurred leading up to the mail ballot election in Case 09-RC-286639;
- (iii) (b) (6), (b) (7)(C) Respondent's (b) (6), (b) (7)(C) and a high-ranking member of Respondent's management team, is responsible for the discriminatory conduct described above in paragraph 5;
- (iv) the conduct described above in paragraphs 6 and 7(a)-(c) occurred while the mail ballot election in Case 09-RC-286639 was ongoing;
- (v) the employees described above in paragraphs 7(a)-(c) were leading organizers for the Union;
- (vi) the conduct described above in paragraphs 5, 6, and 7(a)-(c) has not been retracted;
- (vii) the conduct described above in paragraphs 5, 6, and 7(a)-(c) was meant to intimidate, discourage, and dissuade employees from supporting the Union;
- (viii) there are approximately 21 employees in the Unit described above in paragraph 8(a);
- (ix) given the small nature of the Unit and the small nature of Respondent's facility, all Unit employees learned, or were likely to learn, of the conduct described above in paragraphs 5, 6, and 7(a)-(c).

(f) At all times since about November 18, 2021, based on Respondent's conduct alleged in this Second Consolidated Complaint and on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

(g) At all times since about November 18, 2021, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

9. By the conduct described above in paragraphs 5 and 6, Respondent has been interfering with, restraining, and coercing employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

10. By the conduct described above in paragraph 7, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

11. By the conduct described above in paragraph 8, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

12. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **REMEDY**

The General Counsel seeks as part of the remedy for Respondent's unfair labor practices alleged above an Order requiring Respondent to:

1. Recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees employed by Respondent in the Unit, pursuant to *NLRB v. Gissel*

*Packing Co.*, 395 U.S. 575 (1969) and/or *Joy Silk Mills*, 85 NLRB 1263 (1949) enforced, 185 F. 2d 732 (D.C. Cir 1950) cert. denied 341 U.S. 914 (1951).

2. At a meeting or meetings scheduled to ensure the widest possible attendance, Respondent's representative (b) (6), (b) (7)(C) to read the notice to the employees in English on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an order requiring that Respondent promptly have a Board agent read the notice to employees during worktime in the presence of Respondent's supervisors and agents identified above in paragraph 4.

3. Conduct a training of Respondent's employees, including supervisors and managers, both current and new, on employees' rights under the Act.

The General Counsel further seeks all other relief as may be appropriate to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the second consolidated complaint. The answer must be **received by this office on or June 24, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the



transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the second consolidated complaint are true.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT commencing on **June 27, 2022**, at **10 a.m.**, in the **Committee Meeting Room 215E, Second Floor, State Capitol Building, 1900 Kanawha Boulevard, Charleston, West Virginia**, or in a manner (including via video conference technology) or at a location otherwise ordered by the Administrative Law Judge, and continuing thereafter until conclusion, a hearing will be conducted before an administrative law judge of the Board on the allegations in this consolidated complaint, at which time and place any party within the meaning of Section 102.8 of the Board's Rules and Regulations will have the right to appear and present testimony regarding the allegations in this second consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668.

The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 10, 2022

A handwritten signature in black ink, appearing to read "MT Denholm".

Matthew T. Denholm, Regional Director  
Region 9, National Labor Relations Board  
Room 3-111, John Weld Peck Federal Bldg.  
550 Main Street  
Cincinnati, OH 45202-3271

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

Cases 09-CA-288570, et al.

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Ray Burke, Manager, Variety Restaurant Group LLC d/b/a Tudor's Biscuit World of Elkview,  
1083 Main Street, Elkview, WV 25071

Michael J. Moore, Esq., Steptoe & Johnson PLLC, 400 White Oaks Blvd, Bridgeport, WV 26330-4500

John A. Durkalski, Esq., Butsavage & Durkalski, P.C., 1920 L Street, N.W., Suite 301,  
Washington, DC 20036

United Food and Commercial Workers International Union, CLC (UFCW), Local Union 400,  
8400 Corporate Drive, Suite 200, Landover, MD 20785

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.
- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9**

Variety Restaurant Group LLC  
d/b/a Tudor's Biscuit World of Elkview,

Respondent,

and

United Food and Commercial Workers,  
Local 400,

Petitioner.

Cases 09-CA-288570  
09-CA-288576  
09-CA-288589  
09-CA-290715  
09-CA-290704  
09-RC-286639

**RESPONDENT'S ANSWER TO SECOND CONSOLIDATED COMPLAINT**

Respondent, Variety Restaurant Group LLC d/b/a Tudor's Biscuit World of Elkview ("Respondent" or "Tudor's") responds to the allegations set forth in the General Counsel's June 10, 2022 Second Consolidated Complaint (the "Complaint") as follows:

1(a). Based upon information and belief, Tudor's admits the allegations contained in Paragraph 1(a) of the Complaint.

1(b). Based upon information and belief, Tudor's admits the allegations contained in Paragraph 1(b) of the Complaint.

1(c). Based upon information and belief, Tudor's admits the allegations contained in Paragraph 1(c) of the Complaint.

1(d). Based upon information and belief, Tudor's admits the allegations contained in Paragraph 1(d) of the Complaint.

1(e). Based upon information and belief, Tudor's admits the allegations contained in Paragraph 1(e) of the Complaint.

1(f). Based upon information and belief, Tudor's admits the allegations contained in Paragraph 1(f) of the Complaint.

2(a). Tudor's admits that it is a limited liability company with a location in Elkview, West Virginia which engages in food service. Tudor's denies all remaining allegations contained in Paragraph 2(a) of the Complaint.

2(b). Based upon information and belief, Tudor's admits the allegations contained in Paragraph 2(b) of the Complaint.

2(c). Tudor's admits the allegations contained in Paragraph 2(c) of the Complaint.

3. Tudor's admits the allegations contained in Paragraph 3 of the Complaint.

4. Tudor's admits that the individuals identified in Paragraph 4 of the Complaint have at various times been supervisors at Tudor's. Tudor's denies that the titles for all of the individuals included in Paragraph 4 are correct.

5(a). Tudor's denies the allegations contained in Paragraph 5(a) of the Complaint.

5(b)(i). Tudor's denies the allegations contained in Paragraph 5(b)(i) of the Complaint.

5(b)(ii). Tudor's denies the allegations contained in Paragraph 5(b)(ii) of the Complaint.

5(c)(i). Tudor's denies the allegations contained in Paragraph 5(c)(i) of the Complaint.

5(c)(ii). Tudor's denies the allegations contained in Paragraph 5(c)(ii) of the Complaint.

5(c)(iii). Tudor's denies the allegations contained in Paragraph 5(c)(iii) of the Complaint.

5(d)(i). Tudor's denies the allegations contained in Paragraph 5(d)(i) of the Complaint.

5(d)(ii). Tudor's denies the allegations contained in Paragraph 5(d)(ii) of the Complaint.

5(e). Tudor's denies the allegations contained in Paragraph 5(e) of the Complaint.

5(f). Tudor's denies the allegations contained in Paragraph 5(f) of the Complaint.

5(g)(i). Tudor's denies the allegations contained in Paragraph 5(g)(i) of the Complaint.

5(g)(ii). Tudor's denies the allegations contained in Paragraph 5(g)(ii) of the Complaint.

6. Tudor's denies the allegations contained in Paragraph 6 of the Complaint.

7(a). Tudor's admits the allegations contained in Paragraph 7(a) of the Complaint.

7(b). Tudor's admits the allegations contained in Paragraph 7(b) of the Complaint.

7(c). Tudor's admits the allegations contained in Paragraph 7(c) of the Complaint.

7(d). Tudor's denies the allegations contained in Paragraph 7(d) of the Complaint. Moreover, the allegations contained in Paragraph 7(a) through (d) of the Complaint are the subject of Respondent's Partial Motion for Summary Judgment, which was filed



contemporaneously with Respondent's Answer to the original Complaint in this matter and which is still outstanding.

8(a). Tudor's admits that the unit definition contained in Paragraph 8(a) of the Complaint would be an appropriate bargaining unit. Tudor's denies the remaining allegations contained in Paragraph 8(a) of the Complaint.

8(b). Based upon information and belief, Tudor's denies the allegations contained in Paragraph 8(b) of the Complaint.

8(c). Tudor's admits that the Union approached its management on November of 2018. Tudor's denies the remaining allegations contained in Paragraph 8(c) of the Complaint.

8(d). Tudor's denies the allegations contained in Paragraph 8(d) of the Complaint.

8(e). Tudor's denies the allegations contained in Paragraph 8(e) of the Complaint.

8(e)(i). Tudor's denies the allegations contained in Paragraph 8(e)(i) of the Complaint.

8(e)(ii). Tudor's denies the allegations contained in Paragraph 8(e)(ii) of the Complaint.

8(e)(iii). Tudor's denies the allegations contained in Paragraph 8(e)(iii) of the Complaint.

8(e)(iv). Tudor's denies the allegations contained in Paragraph 8(e)(iv) of the Complaint.

8(e)(v). Based upon information and belief, based upon public representations made by (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) Tudor's admits that it believes those

individuals supported the Union. Tudor's denies all remaining allegations contained in Paragraph 8(e)(v) of the Complaint.

8(e)(vi). Tudor's denies that the conduct described in Paragraphs 5 and 6 occurred as the Complaint alleges, and further denies that it violated the Act. Tudor's further denies that it had a duty to retract any of the conduct described in the Complaint. Tudor's admits that it has not retracted the suspensions of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) as described in Paragraphs 7(a) – (c) of the Complaint.

8(e)(vii). Tudor's denies the allegations contained in Paragraph 8(e)(vii) of the Complaint.

8(e)(viii). Tudor's is without knowledge or information sufficient to form a belief regarding the allegations contained in Paragraph 8(e)(viii) of the Complaint because the employee totals at Tudor's changes frequently. To the extent that a further response is required, Tudor's provides that it denies the allegations contained in Paragraph 8(e)(viii) of the Complaint.

8(e)(ix). Tudor's denies the allegations contained in Paragraph 8(e)(ix) of the Complaint.

8(f). Tudor's denies the allegations contained in Paragraph 8(f) of the Complaint.

8(g). Tudor's denies that it had a duty to recognize or bargain with the Union as the exclusive collective-bargaining representative of the alleged Unit at any time. Moreover, Tudor's has filed contemporaneously with this Answer "Respondent's Partial Motion to Dismiss Second Consolidated Complaint," which moves to dismiss the General Counsel's request for a bargaining order pursuant to *Joy Silk Mills*, 85 NLRB 1263 (1949) enforced, 185 F. 2d 732 (D.C. Cir 1950) cert. denied 341 U.S. 914 (1951). Accordingly, to the extent the allegations contained

in Paragraphs 8(a) – (g) support the General Counsel’s request for a *Joy Silk* bargaining order, they are subject to the ruling on Respondent’s Partial Motion to Dismiss, which is still outstanding.

9. Tudor’s denies the allegations contained in Paragraph 9 of the Complaint.

10. Tudor’s denies the allegations contained in Paragraph 10 of the Complaint.

11. Tudor’s denies the allegations contained in Paragraph 11 of the Complaint.

Moreover, Tudor’s has filed contemporaneously with this Answer “Respondent’s Partial Motion to Dismiss Second Consolidated Complaint,” which moves to dismiss the General Counsel’s request for a bargaining order pursuant to *Joy Silk Mills*, 85 NLRB 1263 (1949) enforced, 185 F. 2d 732 (D.C. Cir 1950) cert. denied 341 U.S. 914 (1951). Accordingly, to the extent the allegations contained in Paragraph 11 support the General Counsel’s request for that remedy, they are subject to the ruling on Respondent’s Partial Motion to Dismiss, which is still outstanding.

12. Tudor’s denies the allegations contained in Paragraph 12 of the Complaint.

Tudor’s denies each and every allegation contained in the Complaint not specifically admitted herein. Tudor’s further denies that it violated the Act in any way, and denies that the General Counsel is entitled to the remedies set forth in the section of the Complaint titled, “REMEDY.” Moreover, the General Counsel’s request for a bargaining order pursuant to *Joy Silk Mills*, 85 NLRB 1263 (1949) enforced, 185 F. 2d 732 (D.C. Cir 1950) cert. denied 341 U.S. 914 (1951) as set forth in Paragraph 1 of the “REMEDY” section is subject to the ruling on “Respondent’s Partial Motion to Dismiss Second Consolidated Complaint,” which is still outstanding.

Respectfully submitted this 24th day of June, 2022.

/s/ Michael J. Moore  
Michael J. Moore, Esq.  
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*Counsel for Variety Restaurant Group LLC  
d/b/a Tudor's Biscuit World of Elkview*

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9**

Variety Restaurant Group LLC  
d/b/a Tudor's Biscuit World of Elkview,

Respondent,

and

United Food and Commercial Workers,  
Local 400,

Petitioner.

Cases 09-CA-288570  
09-CA-288576  
09-CA-288589  
09-CA-290715  
09-CA-290704  
09-RC-286639

**AFFIDAVIT OF SERVICE**

The undersigned hereby certifies that this "*Respondent's Answer to Second Consolidated Complaint*" was served by e-mail on June 24, 2022 to the following parties:

Daniel Goode  
Matthew T. Denholm  
Region 9, National Labor Relations Board  
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/s/ Michael J. Moore  
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*Counsel for Variety Restaurant Group LLC  
d/b/a Tudor's Biscuit World of Elkview*

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

VARIETY RESTAURANT GROUP, LLC D/B/A  
TUDOR'S BISCUIT WORLD OF ELKVIEW

and

UNITED FOOD AND COMMERCIAL  
WORKERS INTERNATIONAL UNION,  
CLC (UFCW), LOCAL 400

Cases 09-CA-288570  
09-CA-288576  
09-CA-288589  
09-CA-290715  
09-CA-290704  
09-RC-286639

ORDER POSTPONING HEARING

IT IS HEREBY ORDERED that, pursuant to Judge Amchan's *Order Granting Respondent's Motion to Postpone the June 27, 2022 Hearing* dated June 21, 2022, the hearing heretofore scheduled in these cases for June 27, 2022 at 10 a.m. in Courtroom No. 6400, 6<sup>th</sup> Floor, 300 Virginia Street East, Charleston, West Virginia, is hereby postponed to **July 26, 2022, 10 a.m.** at a place in **Charleston, West Virginia** to be hereinafter scheduled, or by Zoom in a manner (including via video conference technology) or at a location otherwise ordered by the Administrative Law Judge.

Dated: June 28, 2022



Matthew T. Denholm, Regional Director  
Region 9, National Labor Relations Board  
Room 3-111, John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

**BIG GREEN**

**Respondent**

**and**

**Case 27-CA-276068**

**KELSEY GRAY, an Individual**

**Charging Party**

**and**

**Cases 27-CA-280760  
27-CA-280764  
27-CA-280819  
27-CA-283572**

**DENVER NEWSPAPER GUILD-  
COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 37074, AFL-CIO**

**Charging Party**

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**SECOND AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF HEARING**

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Based on a charge filed by Kelsey Gray (Charging Party Gray), an Individual, in Case 27-CA-276068, and charges filed by Denver Newspaper Guild-Communications Workers of America, Local 37074, AFL-CIO (Charging Party Union), in Cases 27-CA-280760, 27-CA-280764, 27-CA-280819, and 27-CA-283572, alleging that Big Green (Respondent), has been engaging in unfair labor practices affecting commerce as set forth in the National Labor Relations Act, 29 U.S.C., Sec. 151, et seq., (the Act), an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued on April 18, 2022. An Amended Consolidated Complaint issued on May 11, 2022. The General Counsel, by the undersigned, pursuant to section 10(b) of the Act and Section 102.17 of

the Board's Rules and Regulations, now issues this Second Amended Consolidated Complaint and Notice of Hearing and alleges as follows:

1.

(a) The charge in Case 27-CA-276068 was filed by Charging Party Gray on April 22, 2021, and a copy was served on Respondent by U.S. mail on April 23, 2021.

(b) The first amended charge in Case 27-CA-276068 was filed by Charging Party Gray on May 18, 2021, and a copy was served on Respondent by U.S. mail on July 1, 2021.

2.

The following charges were filed by Charging Party Union, as set forth in the following table, and served upon Respondent on the dates indicated by U.S. mail:

<b>Case No.</b>	<b>Amendment</b>	<b>Date Filed</b>	<b>Date Served</b>
27-CA-280760		July 30, 2021	August 2, 2021
27-CA-280760	Amended	December 20, 2021	December 20, 2021
27-CA-280760	Second Amended	January 7, 2022	January 7, 2022
27-CA-280764		July 30, 2021	August 2, 2021
27-CA-280764	Amended	January 7, 2022	January 7, 2022
27-CA-280819		August 2, 2021	August 4, 2021
27-CA-280819	Amended	January 7, 2022	January 7, 2022
27-CA-283572		September 28, 2021	September 28, 2021
27-CA-283572	Amended	January 7, 2022	January 7, 2022, and March 16, 2022



3.

(a) At all material times, Respondent, a Colorado corporation with a principal place of business in Broomfield, Colorado and regional offices in Denver, Colorado; Los Angeles, California; Indianapolis, Indiana; Chicago, Illinois; Detroit, Michigan; and Memphis, Tennessee (jointly Respondent's facilities and individually Respondent's Denver facility, Los Angeles facility, Indianapolis facility, Chicago facility, Detroit facility, and Memphis facility), has engaged in the business of growing and supporting a network of learning gardens at schools and community sites across the United States.

(b) During the fiscal year ending May 10, 2022, which is representative of its annual operations generally, Respondent, in the course and conduct of its business operations described in paragraph 3(a), provided services valued in excess of \$50,000 directly to customers outside the State of Colorado.

(c) At all material times, Respondent has been engaged in commerce within the meaning of Sections 2(2), (6), and (7) of the Act.

4.

At all material times, Charging Party Union has been a labor organization within the meaning of Section 2(5) of the Act.

5.

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Kimball Musk	-	Founder
Courtney Walsh	-	Communications Director

Nicole Alamo	-	Director of Marketing Campaigns
Tighe (Hutchins) Brown	-	President
Robin Martin	-	Chief Operations Officer (COO)
Dianna Zeegers	-	Manager
Ava Jackson	-	Manager

6.

(a) Since about March 19, 2021, Respondent has maintained and distributed to employees a multi-page set of policies including sections titled (i) Values Based Behavior policy, (ii) Ethics and Standards of Conduct, and (iii) Media Inquiries, attached hereto as Appendix A.

(b) The following rule, titled Media Inquiries and referenced in paragraph 6(a)(iii) above, includes provisions which restrict or prohibit employees' ability to engage in union and/or protected activities including their ability to raise issues about their conditions of employment to the media:

[E]mployees, visitors, partners and representatives should refrain from speaking to reporters or other members of the media without explicit permission from the President.

(c) Since about March 19, 2021, Respondent, by COO Robin Martin, enforced the rules described above in paragraphs 6(a) and 6(b) selectively and disparately by applying them only against employees who engaged in protected, concerted activity and/or formed, joined, or assisted the Charging Party Union.

7.

(a) In or about 2021, in response to employee concerns about racism and bias in the workplace, Respondent created the Diversity, Equity, and Inclusion Council (DEI Council) composed of employees from its various regions across the country.

(b) About March 19, 2021, employee participants on the DEI Council collectively sent a letter to Respondent raising concerns about Respondent's actions that affected employees' terms and conditions of employment.

(c) About March 19 and 22, 2021, Respondent, by COO Robin Martin, in separate emails, threatened employees with unspecified reprisals in retaliation for their March 19, 2021 letter referenced above in paragraph 7(b).

(d) Between about March 22, 2021 and April 30, 2021, Respondent, by COO Robin Martin and President Tighe Brown, over video-conference meetings,

(i) Interrogated employees about the March 19, 2021 letter referenced above in paragraph 6(b).

(ii) Made implied threats of unspecified reprisals to employees who created and circulated the March 19, 2021 letter referenced above in paragraph 6(b)

(iii) Told employees that they could not discuss the substance of their interviews related to the letter referenced above in paragraph 6(b) with one another.

8.

(a) About July 29, 2021, Respondent, by Manager Dianna Zeegers, over a video-conference call:

(i) Threatened employees with further discipline and termination for engaging in Union activity.

(ii) Interrogated employees about their Union activity.

(b) About July 29, 2021, Respondent, by Manager Dianna Zeegers, over e-mail:

(i) Threatened employees with termination for engaging in Union activity.

(ii) Prohibited employees from engaging in Union activity and/or protected concerted activity by telling them they could not speak about Respondent without permission from Respondent's President Tighe Brown.

(iii) Prohibited employees from engaging in Union activity and/or protected concerted activity by telling them they could not speak about Respondent in a "disparaging" way.

9.

About July 30, 2021, Respondent, by Manager Ava Jackson, over phone and text message, prohibited employees from engaging in Union activity and/or protected concerted activity by telling employees they could not speak to one another about their terms and conditions of employment, including about matters involving discipline.

10.

(a) About July 30, 2021, during a video-conference meeting, employee Odie Avery requested to be represented by the Charging Party Union during an interview by Respondent.

(b) Respondent's employee Odie Avery had reasonable cause to believe that the interview described above in paragraph 10(a) would result in disciplinary action being taken against him.

(c) About July 30, 2021, Respondent, by COO Robin Martin, over a video-conference meeting, conducted the interview described above in paragraph 10(a) with its

employee Odie Avery, even though Respondent denied his request for union representation as described above in paragraph 10(a).

(d) About July 30, 2021, Respondent, by COO Robin Martin, over a video-conference meeting, interrogated employees about their Union activity during the interview described above in paragraph 10(a).

11.

(a) About July 29, 2021, Respondent issued a disciplinary warning to employee Colleen Donahoe.

(b) About July 30, 2021, Respondent suspended employee Odie Avery.

(c) About September 13, 2021, Respondent terminated employees Odie Avery, Emma Dietrich, Colleen Donahoe, Jenny Tokheim, Amina Bahloul, Erika Hansen, J.P. Miller, Laura Guzman, Margarita Bossa-Bastidas, and Sarah Burns.

(d) Respondent engaged in the conduct described above in paragraphs 11(a), 11(b), and 11(c) because the named employees of Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(e) Respondent engaged in the conduct described above in paragraph 11(c) because the Charging Party Union filed a representation petition with the Board on July 29, 2021 in Case 27-RC-280668 and because employees Odie Avery, Colleen Donahoe and Erika Hansen attended and testified at a related Board proceeding on August 26 and 27, 2021, and because several of the employees named in paragraph 11(c) attended the hearing in support of the Charging Party Union's petition for an election.

(f) The conduct set forth above in paragraphs 11(a), 11(b) and 11(c) relates to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

(g) Respondent engaged in the conduct described above in paragraphs 11(a), 11(b) and 11(c) without prior notice to the Charging Party Union and without affording the Charging Party Union an opportunity to bargain with Respondent with respect to this conduct and/or the effects of this conduct and without first bargaining with the Charging Party Union to an overall good-faith impasse for a collective-bargaining agreement.

12.

About September 13, 2021, Respondent restricted employees' rights to engage in Section 7 activity by entering into separation agreements with employees Odie Avery, Emma Dietrich, Colleen Donahoe, Jenny Tokheim, Amina Bahloul, Erika Hansen, J.P. Miller, Laura Guzman, Margarita Bossa-Bastidas, and Sarah Burns that include overbroad clauses that require employees to:

(a) Waive their right to "recover any individual monetary relief or other individual remedies" connected to charges filed with the National Labor Relations Board.

(b) Refrain from communicating to those outside of Respondent's facility "confidential information" including information "the Employer considers to be confidential and proprietary, whether or not labeled as such."

(c) Refrain from "publicly disparage[ing] or cast[ing] aspersion on the other."

13.

(a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All Project Managers and Program Coordinators employed by Respondent at its facilities in Chicago, IL; Denver, CO; Detroit, MI; Indianapolis, IN; Los Angeles, CA; and Memphis, TN.

Excluded: All other employees, guards, and supervisors as defined in the Act.

(b) By about June 28, 2021, a majority of Respondent's employees in the Unit designated the Charging Party Union as their exclusive collective-bargaining representative for purposes of collective bargaining by signing authorization cards.

(c) About June 29, 2021, the Charging Party Union, by email from employee Colleen Donahoe, requested that Respondent recognize the Union as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Charging Party Union as the exclusive-collective bargaining representative of the Unit.

(d) The serious and substantial unfair labor practice conduct described above in paragraphs 8 through 12 is such that there is only a slight possibility of traditional remedies erasing their effects and conducting a fair election. Therefore, on balance, the employees' sentiments regarding representation, having been expressed through authorization cards, would be protected better by issuance of a bargaining order.

(e) The allegations described above in paragraphs 8 through 12 requiring the issuance of a bargaining order are supported by, among other things:

(i) The Charging Party Union's request for recognition has been outstanding since June 29, 2021.

(ii) The conduct described above in paragraphs 8 through 12 followed immediately on the heels of Respondent's knowledge of the Charging Party Union's campaign.

(iii) The terminations, disciplines, and threats described above in paragraphs 8 through 12 were meant to intimidate, discourage, and dissuade employees from supporting the Charging Party Union.

(iv) There are approximately ten employees in the Unit.

(v) All Unit employees learned or were likely to learn of the conduct described above in paragraphs 8 through 12.

(vi) The employees described above in paragraph 11(c) constituted the entire Unit.

(vii) The terminations described above in paragraph 11(c) were directed at all employees in the Unit.

(viii) Respondent's President Tighe Brown, COO Robin Martin, Manager Dianna Zeegers, and Manager Ava Jackson were high-ranking managers responsible for the discriminatory conduct described above in paragraphs 8 through 12.

(ix) The conduct described above in paragraphs 8 through 12 has not been retracted.

(f) At all times since about June 29, 2021, based on Respondent's conduct alleged in the Second Amended Consolidated Complaint and on Section 9(a) of the Act, the Charging Party Union has been the exclusive collective-bargaining representative of the Unit.



(g) At all times since about June 29, 2021, Respondent has failed and refused to recognize and bargain with the Charging Party Union as the exclusive collective-bargaining representative of the Unit.

14.

By the conduct described above in paragraphs 6, 7(c), 7(d), 8, 9, 10(c), 10(d), and 12, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

15.

By the conduct described above in paragraphs 11(a), 11(b), 11(c) and 11(d), Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

16.

By the conduct described above in paragraphs 11(a), 11(b), and 11(c), Respondent has been discriminating against employees for filing charges or giving testimony under the Act in violation of Section 8(a)(1) and (4) of the Act.

17.

By the conduct described above in paragraphs 11(a), 11(b), 11(c), 11(f), 11(g), and 13, Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees, in violation of Sections 8(a)(1) and (5) of the Act.

18.

The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

### **REMEDY**

The General Counsel seeks as part of the remedy for Respondent's unfair labor practices alleged above an Order requiring Respondent to:

1. Restore its in-person operations as they existed prior to about September 13, 2021, when the Respondent abruptly terminated the employment of the entire Unit.
2. Recognize and bargain with the Charging Party Union as the exclusive collective-bargaining representative of the employees employed by Respondent in the Unit, pursuant to *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969) and/or *Joy Silk Mills*, 85 NLRB 1263 (1949) enforced, 185 F. 2d 732 (D.C. Cir 1950) cert. denied 341 U.S. 914 (1951)
3. Post, mail, email and otherwise distribute the Notice to Employees at Respondent's facilities nationwide and to the personal mailing and email addresses of its employees, including posting on any websites, intranet, or other electronic means used by Respondent to communicate with its employees.
4. At a meeting or meetings scheduled to ensure the widest possible attendance, by a responsible management official, read the Notice to Employees on worktime in the presence of a Board agent. Alternatively, the General Counsel seeks an Order requiring that Respondent promptly have a Board agent read the Notice to Employees during worktime in the presence of a responsible management official.

5. Conduct a training of Respondent's employees nationwide, including supervisors and managers, both current and new, on employees' rights under the Act.

6. Make whole the employees named in paragraph 11(c), including making them whole for consequential damages for economic losses, in addition to losses of pay and benefits, that they suffered as a direct and foreseeable result of Respondent's unfair labor practices.

7. Rescind the rules described above in paragraphs 6(a) and 6(b) and notify employees of the rescission of these rules.

The General Counsel further seeks all other relief as may be appropriate to remedy the unfair labor practices alleged.

### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the above second amended consolidated complaint. The answer must be **received by this office on or before June 8, 2022 or postmarked on or before June 7, 2022.** Respondent also must serve a copy of the answer on each of the other parties.

The answer must be filed electronically through the Agency's website. To file electronically, go to [www.nlrb.gov](http://www.nlrb.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. Responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of

more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on Tuesday, June 7, 2022, at 9:00 a.m. (MT), via Zoom or in another manner as ordered by the administrative law judge, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this second amended consolidated complaint. The

procedures to be followed at the hearing are described in the attached Form NLRB-4668.

The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated in Denver, Colorado this 25th day of May 2022.

/s/ *Paula S. Sawyer*

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PAULA S. SAWYER  
REGIONAL DIRECTOR  
NATIONAL LABOR RELATIONS BOARD  
REGION 27  
Byron Rogers Federal Office Building  
1961 Stout Street, Suite 13-103  
Denver, CO 80294

Attachments

# Appendix A

## Ethics and Standards of Conduct

### **A. Purpose**

To define the standards expected of employees, visitors, partners and representatives while executing their duties and to describe the expectations Big Green has for employees. This policy is designed to articulate the ideals to which Big Green aspires as well as the behaviors that are mandatory in staff's professional roles.

### **B. Policy**

Big Green is committed to a culture of ethics and respect and to upholding high ethical standards in all of its activities and operations. These goals go far beyond "doing the right thing." Ethical conduct is grounded in principles embracing honesty, fairness, respect for others, integrity, accountability, and excellence. Big Green is committed to promoting and enhancing employee health and safety, equitable business and employment practices, and financial stewardship.

Consistent with this commitment, Big Green expects its employees, visitors, partners and representatives to act with integrity and to exhibit behaviors that merit trust and confidence. All Big Green employees, visitors, partners and representatives are expected to comply with and adhere to this policy in performing their job duties, when conducting Big Green business, acting on behalf of Big Green, or representing Big Green.

Complaints of inappropriate, unethical or unlawful behavior are serious matters. Managers at Big Green have a responsibility to create an open and supportive environment where employees feel comfortable raising concerns and questions relative to inappropriate, unethical or unlawful behavior. It is expected that employees will report such behavior and managers will promptly act upon such allegations. If an investigation confirms improper conduct occurred, appropriate action will be taken. Big Green will not tolerate retaliation against employees who, in good faith, raise concerns about unethical or unlawful behavior.

Employees are encouraged in the first instance to address such issues with their manager or the Human Resources department. If for any reason that is not possible or if an employee or visitor does not feel comfortable raising the issue with his or her manager or Human Resources, he or she should contact a member of the Executive team or contact Big Green's ethics hotline or website.

### **Proprietary Information**

Big Green respects the property rights of others. Big Green will not acquire, or seek to acquire through improper means, trade secrets or other proprietary or confidential information. Big Green

will not engage in unauthorized use, copying, distribution or alteration of software or other intellectual property.

Big Green will not inappropriately disclose (whether in one-on-one or small discussions, meetings, presentations, proposals or otherwise) any material nonpublic information with respect to any individual or entity, business operations plans, results of any operations, or any development plans. Material nonpublic information is any information that is not authorized for release by Big Green or Big Green officers.

### **Gifts, Gratuities and Business Courtesies**

Big Green is committed to promoting fair and open competition. While the exchange of business courtesies (e.g., gifts, gratuities, meals, entertainment) can help build business relationships, accepting or providing business courtesies that are excessive or inappropriate can harm the reputation of Big Green and place Big Green at risk for violating applicable laws and regulations. Big Green will neither give nor accept business courtesies that constitute, or could reasonably be perceived as constituting, unfair business inducements that would violate applicable law, regulations or the policies of Big Green or would cause embarrassment or reflect negatively on Big Green's reputation.

### **Accepting Business Courtesies**

Generally, most business courtesies offered to Big Green or its employees, visitors, partners and representatives are offered because of the position within Big Green. Big Green employees, visitors, partners and representatives should not feel any entitlement to accept and keep a business courtesy. Although Big Green employees, visitors, partners and representatives may not use their position to obtain business courtesies, and they must never ask for them, Big Green employees, visitors, partners and representatives may accept low value, unsolicited business courtesies that promote successful working relationships and good will with the firms, entities or organizations with which Big Green maintains or may establish a business relationship.

Employees who award contracts or who can influence the allocation of business, who create specifications that result in the placement of business, or who participate in negotiation of contracts must be particularly careful to avoid actions that create the appearance of favoritism or that may adversely affect Big Green's reputation for impartiality and fair dealing. Big Green expressly prohibits any of its employees, visitors, partners and representatives to accept a courtesy from a potential supplier or vendor when Big Green is involved with choosing or reconfirming a supplier or vendor under any circumstances.

### **Meals, Refreshments and Entertainment**

Big Green employees, visitors, partners and representatives may accept occasional meals, refreshments, entertainment and similar business courtesies that are shared with the person who has offered to pay for the meal or entertainment provided that:

- The courtesies are not frequent and do not reflect a pattern of frequent acceptance of courtesies from the same person or entity



- The courtesy does not create the appearance of an attempt to influence business decisions, such as accepting courtesies or entertainment from a supplier or vendor whose contract is expiring in the near future
- The employee accepting the business courtesy would not feel uncomfortable discussing the courtesy with his or her manager, coworker, Executive team, Board of Directors, or having the courtesies known by the public

### **Accurate Books and Records and Disclosure**

Big Green employees, visitors, partners and representatives are responsible for ensuring that Big Green financial information within their control is recorded accurately and in a timely manner. No false, artificial, or misleading statements or entries will be made in reports, business plans, books, records, accounts, documents or financial statements, including the omission of entries if such omissions could be misleading.

### **Media Inquiries**

From time to time, Big Green employees, visitors, partners and representatives may be approached by reporters and other members of the media. In order to ensure Big Green provides accurate information, employees, visitors, partners and representatives should refrain from speaking to reporters or other members of the media without explicit permission from the President.

### **Accountability**

Big Green employees, visitors, partners and representatives are responsible for knowing and adhering to the values and standards set forth in this policy and for raising questions if they are uncertain about this policy.

Big Green is committed to upholding the letter and spirit of this policy and violations may be cause for disciplinary action up to and including termination of employment.

### **C. References**

- Rules and Policies Governing All of Big Green's Human Resources Policies
- Acceptable Behavior
- Complaint Resolution Procedure
- Conflict of Interest
- Equal Employment Opportunity
- Prohibition of Discrimination
- Prohibition of Sexual and other Unlawful Harassment
- Statement on General Accounting Policies
- Travel and Expenses Policies
- Whistleblower

SECTION BREAK

## Diversity

### **A. Purpose**

To state Big Green's philosophy and proclaim its commitment to diversity in all of its operations. Big Green is committed to the principles and advancement of inclusiveness, creating a welcoming environment, creating opportunities for learning and development, and targeting outreach, recruitment and retention efforts and programs to individuals in underrepresented groups. This policy establishes a foundation for Big Green to create a supportive and respectful work environment and culture that recognizes and values differences, embraces equality and allows the expression of different points of view. The intent of this policy is to go beyond legal non-discrimination requirements and allow Big Green to position itself as an employer of choice.

### **B. Policy**

#### **Definition**

Diversity at Big Green is about accepting and embracing differences, and creating and maintaining a productive work environment where everyone feels valued, talents are fully utilized and organizational goals are met. Diversity represents differences in ideas, thoughts, perspectives, qualities and characteristics among individuals or groups and may consist of visible and non-visible differences. It includes but is not limited to characteristics that are unchangeable, such as age, disability, ethnicity and race. Diversity also includes differences that may change throughout a person's life, such as educational background, geographic location, income, marital status, religious beliefs, military status and work experience.

#### **Scope**

Big Green's Diversity policy influences Big Green's operating policies, practices, processes and programs and controls the treatment of employees. This policy also influences the selection and retention of contractors, partner organizations, visitors, volunteers and any person or group that interacts with Big Green as appropriate.

#### **Monitoring and Review Process**

Big Green is committed to continual assessment and evaluation. Big Green's Human Resources department is responsible for reviewing the Diversity policy annually to ensure it is dynamic, continues to meet Big Green's operational objectives and is reflective of the contemporary society and culture in which Big Green operates. Big Green will proactively inform and educate its staff on topics of diversity, equity and inclusion (DEI). Additionally, all other policies and processes will be evaluated on a regular basis to ensure they do not intentionally or inadvertently discriminate against, disadvantage and/or exclude any individual(s) or group(s).

Any complaint or violation of the Diversity policy should be reported as outlined in Big Green's complaint resolution procedure and will be taken seriously and dealt with in a timely and sensitive manner in accordance with the appropriate disciplinary procedure.

**C. References**

- Rules and Policies Governing All of Big Green's Human Resources Policies
- Equal Employment Opportunity
- Prohibition of Discrimination
- Prohibition of Sexual and Other Unlawful Harassment
- Complaint Resolution Procedure

SECTION BREAK

## Prohibition of Discrimination

### A. Purpose

To establish Big Green's policy on discrimination in the workplace.

### B. Policy

Big Green will not tolerate discrimination that violates federal, state or local law, including discrimination on account of race, color, sex, religion, ancestry, national origin, citizenship, age, marital status, sexual orientation/identification, veteran status or physical or mental disability, against any employee or any applicant for Big Green employment or at any Big Green workplace. In addition, Big Green will not tolerate retaliation against any employee or job applicant who complains of unlawful discrimination. It is also a violation of Big Green policy for an employee knowingly to bring or to solicit false accusations of discrimination.

Any employee who has a complaint of unlawful discrimination at work by anyone, including but not limited to a supervisor, co-worker, visitor or employee of an affiliated institution, must bring the problem to the attention of Big Green using the procedure described in Big Green's Complaint Resolution Procedure.

Employees who observe discriminatory treatment of another Big Green employee are strongly encouraged to bring the problem to the attention of their supervisor and/or Human Resources. Employees can also report discriminatory treatment using Big Green's hotline:

- Toll Free Phone: 833-480-0010
- Fax: 215-689-3885
- Email: [reports@lighthouse-services.com](mailto:reports@lighthouse-services.com) (must include Big Green's name in the report)
- Website: [Submit Whistleblower concern](#)

All employees are expected to assist in efforts to address complaints of unlawful discrimination.

### C. References

- Rules and Policies Governing All of Big Green's Human Resources Policies
- Equal Employment Opportunity
- Prohibition of Sexual or Other Unlawful Harassment
- Complaint Resolution Procedure
- Prohibition of Retaliation

SECTION BREAK

# Prohibition of Sexual or Other Unlawful Harassment

## A. Purpose

To establish Big Green's policy on sexual or other unlawful harassment.

## B. Policy

Harassment is verbal or physical conduct that denigrates an individual or shows hostility or aversion to an individual because of legally protected characteristics such as race, color, sex, religion, ancestry, national origin, citizenship, age, marital status, sexual orientation or identification, veteran status, or physical or mental disability. Harassment may include:

- Sexually oriented jokes or "kidding" behavior
- Unwelcome sexual advances or physical contact
- Direct or subtle pressure for sexual acts or favors
- Conduct that unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive work environment

Sexual harassment or other unlawful harassment will not be tolerated by Big Green. In addition, Big Green will not tolerate retaliation against any employee, job applicant or individual who complains or participates in the investigation or resolution of sexual or other unlawful harassment.

Any employee who has a complaint of sexual or other unlawful harassment by anyone, including but not limited to a supervisor, co-worker, visitor, or employee of an affiliated institution, must bring the problem to the attention of Big Green using the procedure described in the Complaint Resolution Procedure policy.

Employees who observe sexual or other unlawful harassment of another Big Green employee are strongly encouraged to bring the problem to the attention of their supervisor and/or Human Resources.

Employees can also report sexual or other unlawful harassment using Big Green's hotline:

- Toll Free Phone: 833-480-0010
- Fax: 215-689-3885
- Email: [reports@lighthouse-services.com](mailto:reports@lighthouse-services.com) (must include Big Green's name in the report)
- Website: [Submit Whistleblower concern](#)

All employees are expected to assist in Big Green's efforts to address complaints of sexual or other unlawful harassment.

## C. References

## Equal Employment Opportunity

### **A. Purpose**

To establish the commitment of Big Green to provide equal employment opportunity to all employees and applicants.

### **B. Policy**

No person will be discriminated against in his or her Big Green employment on any basis prohibited by law, including but not limited to race, color, sex, religion, ancestry, national origin, citizenship, age, marital status, sexual orientation/identification, veteran status, or physical or mental disability. This policy applies to all terms, conditions, and privileges of employment, including recruitment, hiring, performance appraisals, promotion, compensation, benefits, transfer, termination, retirement, training and all other aspects of employment.

### **C. Responsibilities**

All Big Green employees, especially those with hiring and/or supervisory responsibilities, are responsible for adhering to the letter and spirit of this policy. Human Resources is responsible for providing assistance to Big Green managers and other employees to support compliance with this policy. Employees are encouraged to call Human Resources if they have any questions or concerns about Big Green's Equal Employment Opportunity policy.

### **D. References**

- Rules and Policies Governing All of Big Green's Human Resources Policies
- Prohibition of Discrimination
- Prohibition of Sexual or Other Unlawful Harassment
- Complaint Resolution Procedure

SECTION BREAK

## Values Based Behavior

### **A. Purpose**

To define the standards expected of employees while executing their duties in order to ensure a professional, respectful and civil working environment.

### **B. Policy**

Big Green employees will conduct themselves in a respectful, civil and courteous manner while performing work for Big Green.

It is expected that all employees will:

- Act in a respectful, civil and courteous manner
- Abide by all laws and regulations
- Maintain productive working relationships
- Carry out assigned responsibilities to the best of their abilities and in accordance with Big Green policies
- Be open and truthful in all written and verbal communications
- Comply with all safety rules and regulations
- Base all personnel actions on an individual's qualifications and performance, regardless of race, color, sex, religion, ancestry, national origin, citizenship, age, marital status, sexual orientation/identification, veteran status, or physical or mental disability

Employees are encouraged to bring offensive or inappropriate behavior to the attention of their supervisor or Human Resources. All employees are expected to assist in efforts to address the situation.

Complaints of discrimination or sexual or other unlawful harassment are specifically addressed in the Prohibition of Discrimination and Prohibition of Sexual or Other Unlawful Harassment policies respectively. These complaints should be brought promptly to the attention of Big Green using the procedure described in the Complaint Resolution Procedure policy.

### **C. References**

- Rules and Policies Governing All of Big Green's Human Resources Policies
- Equal Employment Opportunity
- Prohibition of Discrimination
- Prohibition of Sexual and other Unlawful Harassment
- Complaint Resolution Procedure

## Complaint Resolution Procedure

### **A. Purpose**

To provide an effective procedure for promptly resolving employee complaints of discrimination or sexual or other unlawful harassment. This procedure may also be used at Big Green's discretion to resolve other serious employee concerns relating to personnel matters.

### **B. Procedure**

#### **Employee Procedure**

Bring the complaint to Big Green's attention.

- The usual first step is for the employee to discuss the problem with his or her immediate supervisor. If the problem is not resolved after discussion with the employee's supervisor, or if for any reason the employee believes discussion with his or her immediate supervisor is not appropriate, the employee may proceed to the next step.
- If the problem is not resolved after discussion with the employee's supervisor, or if the employee is unsatisfied with the outcome of that discussion, the employee may request a meeting with his or her functional lead to discuss the matter. If the problem is not resolved after discussion with the functional lead, or if for any reason the employee believes discussion with that individual would not be appropriate, the employee may proceed to step 3.
- The employee may request a member of the Executive team review the matter.

#### **Supervisor Procedure**

Inform Human Resources. Any supervisor to whom a complaint of employment discrimination or sexual or other unlawful harassment is brought is expected to inform Human Resources, even if the complaint appears to have been resolved through informal discussion with the employee(s) involved. Supervisors should also advise Human Resources of any other serious employee concerns relating to personnel matters.

#### **Human Resources Procedure**

The Chief Operating Officer or his or her designee will review available and relevant information and conduct whatever additional investigation is deemed necessary.

The Chief Operating Officer or his or her designee will consult with outside counsel and the Executive team member in charge of the functional area in which the complaint arose. Additional inquiries may be made in order to obtain the most complete understanding of the facts. At the conclusion of the investigation, and following the consultation with outside counsel, the Chief Operating Officer or his or her designee will promptly render a decision in writing.



Big Green will take further appropriate actions, if necessary, to resolve the complaint and any related workplace concerns.

**Confidentiality**

Big Green will strive to maintain the confidentiality of sensitive information obtained through this complaint resolution procedure, consistent with the need to gather facts, conduct an effective investigation, and take corrective action as necessary. In some cases, Big Green management will need to inform the Chair of the Board of Directors of the matter.

**No Retaliation**

Big Green will not tolerate retaliation against any employee who, in good faith, makes a complaint and seeks a resolution pursuant to this procedure. Big Green will not tolerate retaliation against any person (e.g., a witness or observer) who participates in an internal investigation or resolution of a complaint.

**Disciplinary or Employment Action**

This procedure will not prevent, limit or delay Big Green from taking disciplinary action or other employment action against any individual, up to and including termination, when Big Green concludes that disciplinary or other employment action is appropriate.

**C. References**

- Rules and Policies Governing All of Big Green's Human Resources Policies
- Equal Employment Opportunity
- Prohibition of Discrimination
- Retaliation Prevention

SECTION BREAK

## Prohibition of Retaliation

### **A. Policy Statement**

Big Green is committed to maintaining a work environment that is free of retaliation. If an employee feels he or she has a good faith complaint (or participates in the investigation process) related to a violation of Big Green policies, federal, state or local laws, Big Green encourages employees to come forward with the complaint and relevant information without fear of retaliation.

### **B. Retaliation Defined**

Retaliation occurs when an employee 1) engages in a protected activity, such as filing a complaint of discrimination or harassment; 2) is then subjected to an adverse employment action, such as a demotion or termination; and 3) a causal link exists between the protected activity and the adverse employment action.

The protected activity may include filing an internal complaint or filing a formal charge with a federal, state or local agency. It may include assisting others in making a complaint or acting as a witness during an investigatory interview, formal proceeding or hearing. It may include opposing unlawful conduct or refusing to act in a way that an employee perceives as unlawful. Examples of adverse employment actions may include:

- Ignoring or ostracizing
- Leaving out of formal or informal meetings
- Threatening
- Changing pay, workload, shifts
- Refusing reasonable requests
- Singling out
- Issuing verbal or written warnings
- Suspending
- Transferring
- Demoting
- Withholding opportunities for advancement
- Punishing an employee's family or close friends who work for the company
- Terminating
- Giving negative references

Although a single incident, of "ignoring" for example, may not rise to the level of retaliation, the totality of the conduct will be reviewed to determine if the adverse employment action(s) resulted

in a material change to the terms and conditions of employment or would deter an employee from making or supporting a complaint.

Also, engaging in a protected activity does not by itself make an employee immune from receiving warnings or disciplinary action for poor performance. However, when the adverse employment action is because the employee engaged in a protected activity, then this is considered impermissible retaliation.

Actions taken in retaliation may stem from acts of an employee's supervisors, coworkers and even third parties, such as vendors or suppliers. Moreover, retaliation claims may exist even when the underlying claim is without merit. Notwithstanding the underlying claim, all actions taken in retaliation are unlawful and will not be tolerated.

### **C. Complaint Reporting Procedure**

If an employee feels he or she is experiencing retaliation for making a complaint, participating in an investigation, either as a party or witness, or for opposing unlawful conduct, he or she may, in good faith, report the complaint directly to Human Resources or tell any manager or supervisor.

All managers must watch for retaliatory conduct and must immediately inform Human Resources about any retaliation they witness or about any complaint they receive. Under no circumstances should an employee report the harassment to a supervisor who he or she is accusing of violating any Big Green policy, state, federal or local laws, including acting in a retaliatory manner.

### **D. Immediate Investigation**

Upon receipt of a complaint of retaliation, Big Green will initiate an immediate, thorough and objective investigation. Big Green will maintain the confidentiality of such complaints on a need-to-know basis. However, the investigation will require disclosure to the accused party and other witnesses in order to investigate, evaluate, or take action in response to the complaint. Please note that Big Green is under a legal duty to investigate all complaints of retaliation and take appropriate action upon a finding that the complaint is justified.

### **E. Remedy for Retaliation**

If Big Green determines that an employee is responsible for retaliatory conduct, it will take appropriate disciplinary action up to and including termination. Big Green will inform the employee lodging the complaint of whatever action is taken against the retaliator. Complaints will not necessarily always be resolved in favor of the complainant and/or the action taken may not be satisfactory to the complainant.

### **F. References**

- Rules and Policies Governing All of Big Green's Human Resources Policies

- Complaint Resolution Procedure
- Whistleblower
- Discrimination
- Prohibition Against Sexual or Unlawful Harassment

SECTION BREAK

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not

submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
**NOTICE**

**Cases 27-CA-276068, 27-CA-280760  
27-CA-280764, 27-CA-280819  
27-CA-283572**

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Kimbal Musk, Executive Chairman  
Tighe Hutchins, President  
Robin Martin, Chief Operations Officer  
Big Green  
11001 W. 120<sup>th</sup> Ave Ste 400  
Broomfield, CO 80021

Alice Conway Powers, Esq.  
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Kelsey Gray  
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Columbus, OH 43222

Anthony M. Mulligan, Administrative Officer  
Denver Newspaper Guild-Communications  
Workers of America Local 37074, AFL-CIO  
1175 Osage St Ste 205  
Denver, CO 80204

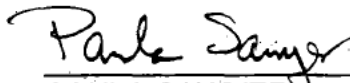
William R. Reinken, Attorney  
Rosenblatt and Associates LLC  
8085 East Prentice Avenue  
Greenwood Village, CO 80111

Kimbal Musk, Executive Chairman  
Robin Martin, Chief Operations Officer  
Big Green  
1637 Pearl St Ste 201  
Boulder, CO 80302

### **IMPORTANT NOTICE**

The date which has been set for hearing in this matter should be checked immediately. If there is proper cause for not proceeding with the hearing on that date, a motion to change the date of the hearing should be made within ten (10) days from the service of the Second Amended Consolidated Complaint and Notice of Hearing. Thereafter, it will be assumed that the scheduled hearing date has been agreed upon and that all parties will be prepared to proceed to the hearing on that date. Later motions to reschedule the hearing generally will not be granted in the absence of a proper showing of unanticipated and uncontrollable intervening circumstances.

All parties are encouraged to fully explore the possibilities of settlement. Early settlement agreements prior to extensive and costly trial preparation may result in substantial savings of time, money and personnel resources for all parties. The Board Agent assigned to this case will be happy to discuss settlement at any mutually convenient time.

  
\_\_\_\_\_  
PAULA SAWYER  
REGIONAL DIRECTOR  
REGION 27



## FURTHER NOTICE REGARDING SETTLEMENT JUDGES

It is the policy of the Board and the office of the General Counsel to provide full opportunity to the parties to reach a mutually satisfactory resolution of issues as an alternative to litigation. Settlement of a meritorious case is the most effective means to improve relationships between the parties and to permit the Board to concentrate its decisional activities in other cases, thereby expediting all case action. (CHM 10124.1)

The attention of all parties is directed to Section 102.35 of the Board's Rules and Regulations regarding the assignment of settlement judges:

### Section 102.35

(b) Upon the request of any party or the judge assigned to hear a case, or on his or her own motion, the chief administrative law judge in Washington, D.C., the deputy chief judge in San Francisco, the associate chief judge in Atlanta, or the associate chief judge in New York may assign a judge who shall be other than the trial judge to conduct settlement negotiations. In exercising his or her discretion, the chief, deputy chief, or associate chief judge making the assignment will consider, among other factors, whether there is reason to believe that resolution of the dispute is likely, the request for assignment of a settlement judge is made in good faith, and the assignment is otherwise feasible. Provided, however, that no such assignment shall be made absent the agreement of all parties to the use of this procedure.

(1) The settlement judge shall convene and preside over conferences and settlement negotiations between the parties, assess the practicalities of a potential settlement, and report to the chief, deputy, or associate the status of settlement negotiations, recommending continuation or termination of the settlement negotiations. Where feasible settlement conferences shall be held in person.

(2) The settlement judge may require that the attorney or other representative for each party be present at settlement conferences and that the parties or agents with full settlement authority also be present or available by telephone.

(3) Participation of the settlement judge shall terminate upon the order of the chief, deputy, or associates issued after consultation with the settlement judge. The conduct of settlement negotiations shall not unduly delay the hearing.

(4) All discussions between the parties and the settlement judge shall be confidential. The settlement judge shall not discuss any aspect of the case with the trial judge, and no evidence regarding statements, conduct, offers of settlement, and concessions of the parties made in proceedings before the settlement judge shall be admissible in any proceeding before the Board, except by stipulation of the parties. Documents disclosed in the settlement process may not be used in litigation unless voluntarily produced or obtained pursuant to subpoena.

(5) No decision of a chief, deputy, or associate concerning the assignment of a settlement judge or the termination of a settlement judge's assignment shall be appealable to the Board.

(6) Any settlement reached under the auspices of a settlement judge shall be subject to approval in accordance with the provisions of Section 101.9 of the Board's Statements of Procedures.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

**BIG GREEN**

**Respondent**

**and**

**Case 27-CA-276068**

**KELSEY GRAY, an Individual  
Charging Party**

**and**

**Cases 27-CA-280760  
27-CA-280764  
27-CA-280819  
27-CA-283572**

**DENVER NEWSPAPER GUILD-  
COMMUNICATIONS WORKERS OF AMERICA,  
LOCAL 37074, AFL-CIO  
Charging Party**

**RESPONDENT’S ANSWER AND AFFIRMATIVE DEFENSES  
TO THE SECOND AMENDED CONSOLIDATED COMPLAINT AND NOTICE OF  
HEARING**

For its Answer to the Second Amended Consolidated Complaint and Notice of Hearing (the “Second Amended Consolidated Complaint”) in the captioned-matters, Respondent Big Green (“Respondent” or “Big Green”) makes the following admissions, denials, statements, and defenses:

1(a). Respondent admits that Charging Party Kelsey Gray (“Gray”) filed a charge, but denies the remaining allegations contained in Paragraph 1(a) of the Second Amended Consolidated Complaint.

1(b). Respondent admits that Gray filed an amended charge, but denies the remaining allegations contained in Paragraph 1(b) of the Second Amended Consolidated Complaint.

2. Respondent admits that Charging Party Denver Newspaper Guild- CWA Local 37074, AFL-CIO (the “Union”) filed and amended multiple charges, but denies the remaining allegations contained in Paragraph 2 of the Second Amended Consolidated Complaint.

3(a). Respondent admits that it is a non-profit organization based in Colorado, but it denies the remaining allegations contained in Paragraph 3(a) of the Second Amended Consolidated Complaint.

3(b). Respondent admits the allegations contained in Paragraph 3(b) of the Second Amended Consolidated Complaint.

3(c). Respondent admits the allegations contained in Paragraph 3(c) of the Second Amended Consolidated Complaint.

4. Upon information and belief, Respondent admits the allegations contained in Paragraph 4 of the Second Amended Consolidated Complaint.

5. Upon information and belief, Respondent admits the allegations contained in Paragraph 5 of the Second Amended Consolidated Complaint.

6(a). Respondent admits only that it maintains and distributes its policies to its employees at its facilities. Further answering, Respondent denies the remaining allegations contained in Paragraph 6(a) of the Second Amended Consolidated Complaint.

6(b). Respondent states that Respondent’s Media Inquiries speaks for itself.

6(c). Respondent denies the allegations contained in Paragraph 6(c) of the Second Amended Consolidated Complaint.

7(a). Respondent admits the allegations contained in Paragraph 7(a) of the Second Amended Consolidated Complaint.

7(b). Respondent denies the allegations contained in Paragraph 7(b) of the Second Amended Consolidated Complaint.

7(c). Respondent denies the allegations contained in Paragraph 7(c) of the Second Amended Consolidated Complaint.

7(d)(i). Respondent denies the allegations contained in Paragraph 7(d)(i) of the Second Amended Consolidated Complaint.

7(d)(ii). Respondent denies the allegations contained in Paragraph 7(d)(ii) of the Second Amended Consolidated Complaint.

7(d)(iii). Respondent denies the allegations contained in Paragraph 7(d)(iii) of the Second Amended Consolidated Complaint.

8(a)(i). Respondent denies the allegations contained in Paragraph 8(a)(i) of the Second Amended Consolidated Complaint.

8(a)(ii). Respondent denies the allegations contained in Paragraph 8(a)(ii) of the Second Amended Consolidated Complaint.

8(b)(i). Respondent denies the allegations contained in Paragraph 8(b)(i) of the Second Amended Consolidated Complaint.

8(b)(ii). Respondent denies the allegations contained in Paragraph 8(b)(ii) of the Second Amended Consolidated Complaint.

8(b)(iii). Respondent denies the allegations contained in Paragraph 8(b)(iii) of the Second Amended Consolidated Complaint.

9. Respondent denies the allegations contained in Paragraph 9 of the Second Amended Consolidated Complaint.

10(a). Respondent denies the allegations contained in Paragraph 10(a) of the Second Amended Consolidated Complaint.

10(b). Respondent denies the allegations contained in Paragraph 10(b) of the Second Amended Consolidated Complaint.

10(c). Respondent admits only that a video-conferencing meeting was held with Respondent's former COO, Robin Martin and former Regional Project Manager, Odie Avery. Further answering, Respondent denies the remaining allegations contained In Paragraph 10(c) of the Second Amended Consolidated Complaint.

10(d). Respondent admits only that a video-conferencing meeting was held. Further answering, Respondent denies the remaining allegations contained In Paragraph 10(d) of the Second Amended Consolidated Complaint.

11(a). Respondent admits the allegations contained in Paragraph 11(a) of the Second Amended Consolidated Complaint.

11(b). In response to Paragraph 11(b) of the Second Amended Consolidated Complaint, Respondent states that Odie Avery was temporarily suspended from attending Respondent's events until September 2021, for violating Respondent's policies.

11(c). In response to Paragraph 11(c) of the Second Amended Consolidated Complaint, Respondent states that on September 13, 2021, Odie Avery, Emma Dietrich, Colleen Donohue, Jenny Tokheim, Amina Bahloul, Erick Hansen, John ("J.P.") Miller, Laura Guzman, and Sarah Burns were laid off as part of Respondent's reduction-in-force. Further answering, Margarita Bossa Bastidas was offered a newly created position (Content Coordinator), that she previous applied for, but chose the severance that Respondent offered to its former employees impacted by its re-organization.

11(d). Respondent denies that allegations contained in Paragraph 11(d) of the Second Amended Consolidated Complaint.

11(e). Respondent denies that allegations contained in Paragraph 11(e) of the Second Amended Consolidated Complaint.

11(f). Respondent denies that allegations contained in Paragraph 11(f) of the Second Amended Consolidated Complaint.

11(g). Respondent denies that allegations contained in Paragraph 11(g) of the Second Amended Consolidated Complaint.

12(a). In response to Paragraph 12(a) of the Second Amended Consolidated Complaint, Respondent states that the separation agreement speaks for itself. Further answering, Respondent denies the remaining allegations contained in Paragraph 12(a) of the Second Amended Consolidated Complaint.

12(b). In response to Paragraph 12(b) of the Second Amended Consolidated Complaint, Respondent states that the separation agreement speaks for itself. Further answering, Respondent denies the remaining allegations contained in Paragraph 12(b) of the Second Amended Consolidated Complaint.

12(c). In response to Paragraph 12(c) of the Second Amended Consolidated Complaint, Respondent states that the separation agreement speaks for itself. Further answering, Respondent denies the remaining allegations contained in Paragraph 12(c) of the Second Amended Consolidated Complaint.

13(a). Respondent denies that allegations contained in Paragraph 13(a) of the Second Amended Consolidated Complaint.

13(b). Respondent denies the allegations contained in Paragraph 13(b) of the Second Amended Consolidated Complaint.

13(c). Respondent admits the allegations contained in Paragraph 13(c) of the Second Amended Consolidated Complaint.

13(d). In response to Paragraph 13(d) of the Second Amended Consolidated Complaint, Respondent denies that it engaged in any unfair labor practice conduct. Further answering, Respondent denies the remaining allegations contained in Paragraph 13(d) of the Second Amended Consolidated Complaint.

13(e)(i). Respondent denies the allegations contained in Paragraph 13(e)(i) of the Second Amended Consolidated Complaint.

13(e)(ii). Respondent denies the allegations contained in Paragraph 13(e)(ii) of the Second Amended Consolidated Complaint.

13(e)(iii). Respondent denies the allegations contained in Paragraph 13(e)(iii) of the Second Amended Consolidated Complaint.

13(e)(iv). Respondent denies the allegations contained in Paragraph 13(e)(iv) of the Second Amended Consolidated Complaint.

13(e)(v). Respondent denies the allegations contained in Paragraph 13(e)(v) of the Second Amended Consolidated Complaint.

13(e)(vi). Respondent denies the allegations contained in Paragraph 13(e)(vi) of the Second Amended Consolidated Complaint.

13(e)(vii). Respondent denies the allegations contained in Paragraph 13(e)(vii) of the Second Amended Consolidated Complaint.

13(e)(viii). Respondent denies the allegations contained in Paragraph 13(e)(viii) of the Second Amended Consolidated Complaint.

13(e)(ix). Respondent denies the allegations contained in Paragraph 13(e)(ix) of the Second Amended Consolidated Complaint.

13(f). Respondent denies the allegations contained in Paragraph 13(f) of the Second Amended Consolidated Complaint.

13(g). Respondent denies the allegations contained in Paragraph 13(g) of the Second Amended Consolidated Complaint.

14. Respondent denies the allegations contained in Paragraph 14 of the Second Amended Consolidated Complaint.

15. Respondent denies the allegations contained in Paragraph 15 of the Second Amended Consolidated Complaint.

16. Respondent denies the allegations contained in Paragraph 16 of the Second Amended Consolidated Complaint.

17. Respondent denies the allegations contained in Paragraph 17 of the Second Amended Consolidated Complaint.

18. Respondent denies the allegations contained in the REMEDY section of the Second Amended Consolidated Complaint.

19. Respondent denies every allegation contained in the Second Amended Consolidated Complaint not specifically admitted to herein.

### **AFFIRMATIVE DEFENSES**

1. The Second Amended Consolidated Complaint, in whole or in part, fails to state a claim upon which relief can be granted.



2. The Second Amended Consolidated Complaint fails because some or all of the employees at issues are supervisors as defined under the NLRA.

3. The Second Amended Consolidated Complaint fails because some or all of the employees at issues are managerial employees as defined under the NLRA.

4. Odie Avery, former Regional Project Manager, is a managerial and supervisory employee as defined under the NLRA.

5. Project Managers and Program Coordinators are supervisors as defined under the NLRA.

6. Project Managers and Program Coordinators are managerial employees as defined under the NLRA.

7. Gray is not a proper party to the lawsuit because she was not an employee in the proposed bargaining unit.

8. Consolidation of the charges is improper.

9. Consolidation of the charges is contrary to the Board regulations.

10. The Regional Director improperly refused to permit a ruling to be issued in CASE NO. 27 RC 280668.

11. A ruling was written and ready to be issued in CASE NO. 27 RC 280668, but the Regional Director would not permit the ruling to be published in order to improperly pursue this Complaint.

12. The proposed micro-unit does not share a community of interests.

13. The Board failed to issue a ruling on Respondent's bargaining unit objections despite holding a lengthy hearing and receiving post-hearing briefs.

14. The Bargaining unit is not appropriate.

15. The bargaining unit does not have common interests.
16. The Union does not have majority support.
17. In addition to seeking to represent an inappropriate unit, the Union also seeks to inappropriately include managerial and supervisory employees in the proposed bargaining unit.
18. The Union and charging parties cannot meet the “but-for” standard.
19. Respondent’s policies and procedures are lawful.
20. The Charging Party Unit did not engage in protected, concerted activity.
21. The Board has failed to issue a ruling on the certification.
22. Respondent did not breach any legal duty to the Union.
23. Respondent’s actions toward the Charging Party Unit were taken in good faith and for legitimate and non-retaliatory reasons.
24. Some or all of the claims set forth in the Second Amended Consolidated Complaint are time-barred.
25. The claims asserted in the Second Amended Consolidated Complaint are barred, in whole or in part, by the doctrines of waiver, estoppel, ratification, acquiescence, accord, satisfaction, and/or unclean hands.
26. Charging Party’s Second Amended Consolidated Complaint against Respondent is frivolous, unreasonable, groundless, and without foundation.
27. Charging Party is estopped from recovering any relief from Respondent.
28. Charging Party has not sustained any damages proximately or actually caused by Respondent.
29. Charging Party Unit’s discharge was based upon legitimate a reason – restructure of organization, and not based upon any union activity or any unlawful reason.

30. Charging Party Unit's position was eliminated as part of a reduction-in-force.
31. The reduction-in-force impacted every level of Big Green and was broader than just employees in the proposed bargaining unit.
32. At least one other bargaining unit member was retained after the reorganization.
33. The reorganization was driven, in part, by the COVID-19 regulations.
34. Some or all of the bargaining unit employees signed severance agreements.
35. Some or all of the bargaining unit employees resigned from their former positions.
36. The Second Amended Consolidated Complaint was unlawfully issued and has no legal viability.
37. Some or all of the remedies sought are contrary to the NLRA.
38. Some or all of the remedies sought are contrary to the documented facts.
39. Some or all of the remedies sought are contrary to Big Green's non-profit obligations.
40. Reinstatement is not appropriate because the bargaining unit positions have been permanently eliminated.
41. Some or all of the remedies are contrary to the voluntary releases signed by the bargaining unit employees.
42. Respondent reserves the right to assert additional affirmative defenses at such time and to such extent as is warranted by discovery and developments in this case.

WHEREFORE, Respondent demands that the Second Amended Consolidated Complaint be dismissed in its entirety, with prejudice, that judgment be entered in Respondent's favor, and that Respondent recovers its expenses, including reasonable attorneys' fees, and such other and

further relief to which it may be entitled at law or in equity or as the Board or Administrative Law Judge deems just and appropriate.

Respectfully submitted,

/s/ David A. Campbell

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Andrea V. Arnold (Ohio Bar#0099455)

Donald G. Slezak (Ohio Bar#0092422)

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*Attorneys for Respondent*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of June 2022, the foregoing was filed with the Region through the Board's electronic filing system and was served upon the following counsel for the Union's via email:

Anthony M. Mulligan, Administrative Officer  
Denver Newspaper Guild-Communications  
Workers of America Local 37074, AFL-CIO  
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Denver, CO 80204  
[dng@denvernewspaperguild.org](mailto:dng@denvernewspaperguild.org)

William R. Reinken, Attorney  
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/s/ David A. Campbell  
David A. Campbell (Ohio Bar# 0066494)

*One of the Attorneys for Respondent*

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
SAN FRANCISCO BRANCH OFFICE**

**BIG GREEN  
Respondent**

**and**

**Case 27-CA-276068**

**KELSEY GRAY, an Individual  
Charging Party**

**and**

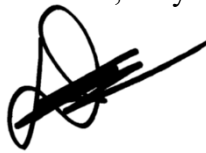
**Cases 27-CA-280760  
27-CA-280764  
27-CA-280819  
27-CA-283572**

**DENVER NEWSPAPER GUILD-  
COMMUNICATIONS WORKERS OF  
AMERICA, LOCAL 37074, AFL-CIO  
Charging Party**

**NOTICE REGARDING HEARING START TIME**

Please note that the hearing in this matter will commence at 9:00 a.m. Pacific time. Given the geographic dispersion of the participants some will likely be called to testify outside of what would be considered normal business hours in their particular time zone. The parties should plan accordingly.

Dated, San Francisco, California, May 25, 2022.

A handwritten signature in black ink, appearing to be 'Dickie Montemayor', with a stylized, looped initial 'D' and a long horizontal stroke extending to the right.

Dickie Montemayor  
Administrative Law Judge

**CORRECTED  
PROOF OF SERVICE**

I hereby certify that I have this 25th day of May 2022, caused copies of the foregoing document entitled, **ORDER GRANTING MOTION FOR ZOOM HEARING** to be delivered by electronic mail upon the following:

**For the NLRB Region 27:**

Noor I. Alam, Esq.

Email: noor.alam@nlrb.gov

**For the Respondent:**

Andrea V. Arnold, Esq.

David A. Campbell, Esq.

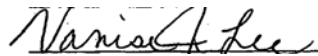
Email: andrea.arnold@lewisbrisbois.com

Email: david.a.campbell@lewisbrisbois.com

**Charging Party:**

William R. Reinken, Esq.

Email: wreinken@cwa-union.org



Vanise J. Lee

Designated NLRB Agent